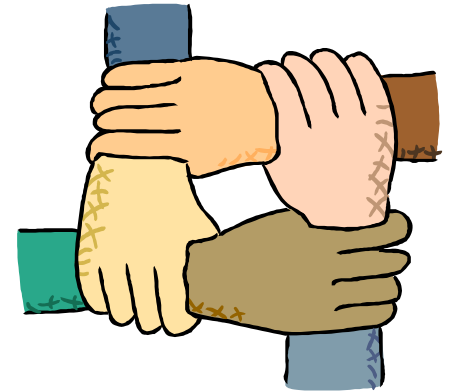


# EQUAL EMPLOYMENT OPPORTUNITY (EEO)

National Guard

Technician Personnel Management Course





# **State Equal Employment Manager (SEEM)**

**Shirley Bryant**

**Building 306A, Room 122**

**672-1303**

**[shirley.n.bryant.mil@mail.mil](mailto:shirley.n.bryant.mil@mail.mil)**

# Agenda

- Federal Laws
- Definitions
- HING EEO Policy and Anti-Harassment Policy
- Sexual Harassment
- No FEAR Act
  - Anti-Discrimination Laws
  - Whistleblower Protection Laws
  - Retaliation Laws
- Responding to Employees Alleging Violations of Whistleblower Protections
- EEO Complaint Process
- Supervisor Roles and Responsibilities

# Federal Laws

- Title VII, Civil Rights Act of 1964
  - The Pregnancy Discrimination Act
- Equal Pay Act of 1963
- Age Discrimination in Employment Act of 1967
- Americans with Disabilities Act of 1990
- The Rehabilitation Act of 1973
- Civil Rights Act of 1991
- No FEAR Act of 2002
- The Genetic Information Nondiscrimination Act of 2008

# EEO: The Concept



## ***Equal:***

- Of same measure, quantity, amount or number
- Alike in quality, nature or status
- Alike for each member of a group, class or society

## ***Employment:***

- Activity in which one engages or is employed
- An instance of such activity
- Act of employing; state of staying employed

# EEO: The Concept

## ***Opportunity:***

- A favorable juncture of circumstances
- A good chance for advancement or progress

## ***EEO: The Legal Definition***

- Providing equal opportunity in employment on the basis of merit and fitness without regard to race, color, religion, sex/gender, national origin, age and/or disability.

# Discrimination

## *Definition:*

- To provide different treatment or to show favoritism on a basis other than individual merit



# Harassment

## *Definition:*

- Harassment is unwelcome conduct (verbal or physical) that is based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.







# Harassment



- Harassment becomes unlawful when
  - Enduring the offensive conduct becomes a condition of continued employment
  - The conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive



# Hostile Work Environment

## ***Definition:***

- Hostile work environment exists when one's behavior within a workplace creates an environment that is difficult or uncomfortable for another person to work in, due to discrimination



# Retaliation



## Definition:

- Workplace retaliation is when an employer takes an action against an individual after having filed a previous complaint or participated as part of a complaint process and/or investigation



# Whistleblower

### ***Definition:***

A whistleblower is a person who exposes secretive information or activity that is deemed illegal, unethical, or not correct within a private or public organization



# How We Perceive Others

**POSITIVE??? + Like us**

**NEGATIVE??? + Not like us**



# Affirmative Employment

- Provides *equal opportunity in employment* for all technician personnel or applicants for employment with the National Guard, *and*
- *Prohibits discrimination* in all aspects of its personnel policies, programs, practices and operations and of all its working conditions and relationships with employee and applicants for employment

# EEO Policy Directive 2018-03

- HING DoD employees will be treated fairly and considered without regard to age, color, disability, sex (including pregnancy, sexual orientation and gender identity), genetic information, national origin, race, religion and reprisal
- Equal treatment in recruitment, hiring, promotions, awards, disciplinary actions and any other employment related matters.

# EEO Policy Directive 2018-03

- All EEO complaints will be handled expeditiously, fairly, and thoroughly addressed in accordance with applicable state and federal laws, and agency procedures
- Any employee or supervisor of the HING DoD found to have discriminated against another member will be subject to disciplinary action, up to and including termination
- All members, supervisory, and non-supervisory alike must share in this responsibility.



# Anti-Harassment Policy

## Directive 2018-02



- Applies to all State of Hawaii, DOD federal civilian employees and supervisors of federal civilian employee
- The Adjutant General is committed to taking all necessary steps to prevent harassment in the workplace and to correct harassing conduct that occurs before it becomes severe or pervasive

# Anti-Harassment Policy

## Directive 2018-02



Managers and Supervisors will:

- Immediately report incidents of harassment. Failure to report allegations of harassment is a violation of policy and may result in disciplinary action
- Provide interim relief to alleged victims of harassment pending outcome of investigations to ensure further harassment does not occur.
- Take prompt and effective corrective or disciplinary action against employees who violate this policy and other necessary steps to keep the workplace free of harassment

# Anti-Harassment Policy

## Directive 2018-02



Managers and Supervisors will:

- Document all incidents of harassment witnessed, or brought to your attention along with efforts to correct them
- Communicate this policy and management support of harassment to subordinates
- Monitor workplace areas on an ongoing basis for inappropriate conduct
- Conduct training on this policy and procedures on an annual basis

# Sexual Harassment



# Sexual Harassment



- Influencing, offering to influence, or threatening the career, pay or job of another person in exchange for sexual favors;
- Deliberate or repeated offensive comments, gestures or physical contact of a sexual nature in a work or duty related environment; and
- Conduct which interferes with an individual's performance or creates an intimidating, hostile or offensive environment

# Types of Sexual Harassment

***Quid Pro Quo*** ( a favor or advantage granted or expected in return for something):

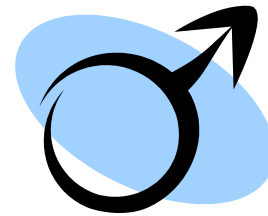
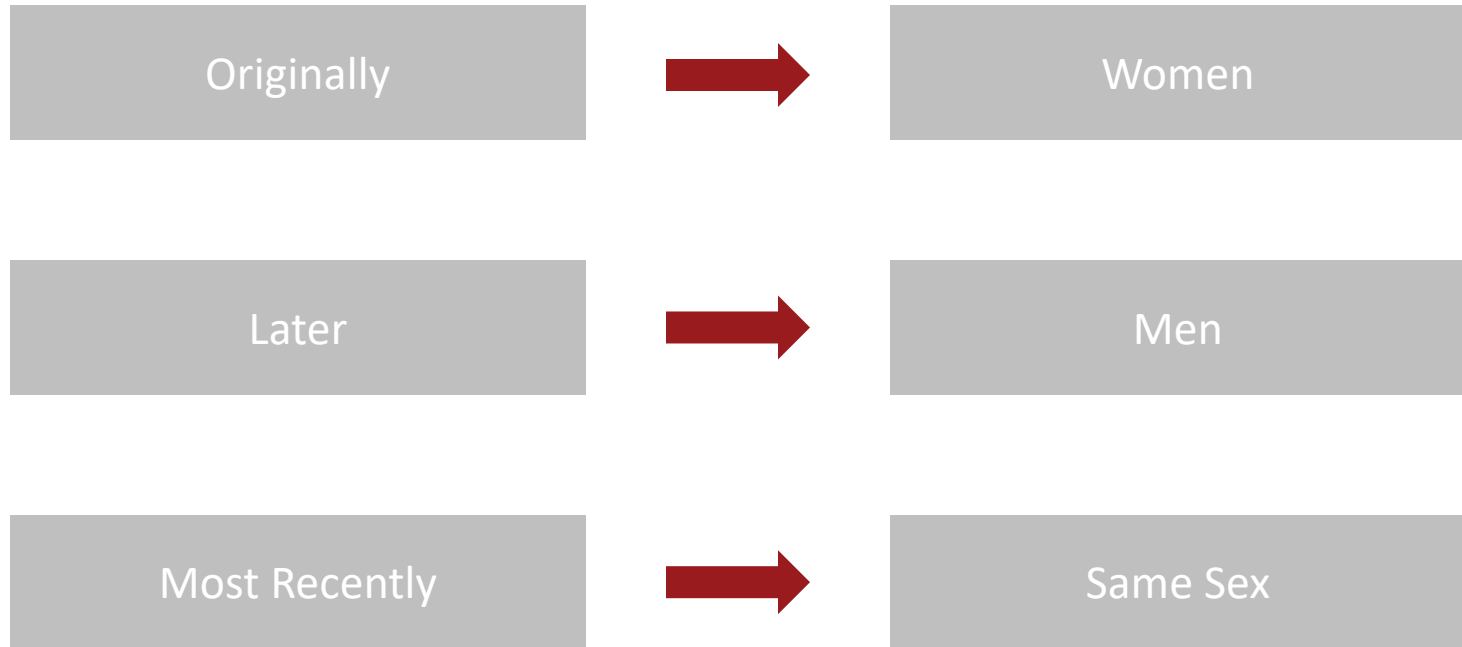
- Related to terms of conditions of employment and/or an employment decision; “something for something”

## ***Hostile Work Environment:***

- Relates to a disruptive and/or offensive work environment



# Sexual Harassment Victims



# Prevent Sexual Harassment

- Examine your own personal behavior
- Show respect for individuals regardless of your or their work position
- Provide an environment free of intimidating hostility or psychological stress;
- Control social interactions so that they do not interfere with productivity; and
- Take corrective action(s) whenever sexual behavior is displayed



# Sexual Harassment is...



**Inappropriate  
Disrespectful  
Illegal**

**Notification and Federal Employee  
Antidiscrimination and Retaliation Act of  
2002**

**(No FEAR Act)**

**Pub. L. 107-174**

A vertical rectangular image of the United States flag, showing the stars and stripes, serving as a background for the text.

**No FEAR Act**

# No FEAR Act

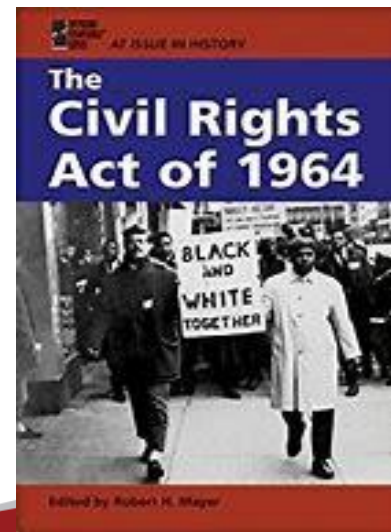
- Congress enacted on 15 May 2002
- Requires federal agencies to
  - Be accountable for violations of antidiscrimination and whistleblower protection laws
  - Inform federal employees of their rights and protections available under the federal antidiscrimination, whistleblower protection and retaliation laws
  - Post on its public website statistical data (quarterly and annually) relating to the agency's EEO complaints

# Anti-Discrimination Laws

- A federal agency cannot discriminate against an employee or applicant based on race, color, religion, sex/gender, national origin, age, disability, marital status or political affiliation
- Protects individuals from discrimination regarding the terms and conditions of their employment in relations to:
  - Hiring, promotion, pay, leave, awards, training, assignments, suspensions and terminations
  - Requests for disability and religious reasonable accommodations unless doing so would impose an undue hardship on the employer
  - Harassment or creation of a hostile work environment based on race, color, religion, sex/gender, national origin, age, and disability

# Title VII of the 1964 Civil Rights Act

- Prohibits discrimination against federal employees and applicants from employment on the basis of race, color, religion, sex/gender and national origin
- Sexual harassment and pregnancy discrimination are considered forms of sex discrimination
- Prohibits retaliation against individuals exercising their rights under the Act



# The Age Discrimination in Employment Act (ADEA)

Prohibits discrimination against federal employees and applicants who are 40 years of age or older

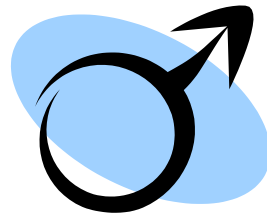


# The Equal Pay Act of 1963

This law makes it illegal to pay different wages to men and women if they perform equal work in the same workplace



**EQUAL PAY**



# The Rehabilitation Act of 1973

- Prohibits employment discrimination against qualified individuals with disabilities
- Requires agencies to provide reasonable accommodations for an employee or applicant with a disability unless doing so would impose an undue hardship on the operation of the employer's business





# The Rehabilitation Act of 1973

## What is a Qualified Individual with a Disability?

An Individual with a physical or mental disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of the job

# The Rehabilitation Act of 1973



## Reasonable Accommodation:



- Adjustment to a job or workplace to enable the disabled individual to perform his/her duties
- Not required to be specific to individuals request but must be reasonable and effective
- Agency has no obligation to change performance standards or to eliminate essential functions of the position

# Whistleblower Protection Act

The Whistleblower Protection Act of 1989, 5 U.S.C. 2302b, Pub.L. 101-12 as amended, is a United States federal law that **protects federal whistleblowers** who work for the government and report the possible existence of an activity constituting a ***violation of law, rules, or regulations, gross mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to public health and safety***. A federal agency violates the Whistleblower Protection Act if agency authorities take retaliatory personnel action against any employee or applicant because of disclosure of information by that employee or applicant



# Whistleblower Categories

In general, employees must have a “**reasonable belief**” that they are disclosing information in one or more of the following categories:

- Violation of any law, rule, or regulation
- Gross mismanagement: substantial risk of significant impact on mission
- Gross waste of funds: more than debatable expenditure
- Abuse of authority
- Substantial & specific danger to public health or safety

# Protected Activity

Protected activity includes:

- Exercise of appeal, complaint, or grievance rights
- Testimony or other assistance to person exercising such rights
- Cooperation with or disclosures to Special Counsel, Inspector General, or component responsible for internal investigation or review
- Refusal to obey an order that would require violation of law, rule, or regulation

# Retaliation Laws

- A federal agency cannot retaliate against an employee or applicant because the individual exercises his or her rights under any of the federal antidiscrimination or whistleblower protection laws
- If an employee/applicant believes that he/she is a victim of retaliation for engaging in protected activity, the employee/applicant must follow, as appropriate, the procedures described in the Antidiscrimination Law and Whistleblower Protection Laws or the administrative or negotiated grievance procedures in order to pursue any legal remedy

# Disciplinary Actions

- Under the existing laws, each agency retains the right, where appropriate, to discipline a federal employee who has engaged in discriminatory or retaliatory conduct, up to and including removal.
- Agencies must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation.
- Nothing in the No FEAR Act alters existing laws or permits an agency to take unfounded disciplinary action against a federal employee or to violate the procedural rights of a federal employee who has been accused of discrimination.

# Additional Information

Additional information regarding federal antidiscrimination, whistleblower protection and retaliation laws can be found on the Equal Employment Opportunity Commission (EEOC) website at [www.eeoc.gov](http://www.eeoc.gov) and on the Office of Special Counsel (OSC) website at <https://osc.gov>





# No FEAR Act

## Required Training

- Training required annually for all federal non-dual status technicians (Title 5) and supervisors – to include supervisors in an AGR or dual/non-dual status technician status
- Training required every two years for all other full-time personnel (AGR and dual status technicians)
- Training required no later than 90 days after effective date of hire for newly hired technicians and AGR employees

# No FEAR Act Required Training

- ANG Personnel:

<https://golearn.adls.af.mil/login.aspx>

- ARNG Personnel:

<https://jkodirect.jten.mil>



Submit certificate of completion to  
[shirley.n.bryant.mil@mail.mil](mailto:shirley.n.bryant.mil@mail.mil)



## ***Responding to Employees Alleging Violations of Whistleblower Protections***

**★ New Requirements ★**

***PUB. L. Nos. 115-73 (Oct. 26, 2017), 115-91 (December 12, 2017)***

# **Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 P.L. 115-73 (10/26/2017)**

Increases protections for federal employees, increases awareness of federal whistleblower protections, and increases accountability and requires discipline for supervisors who retaliate against whistleblowers

# Respond to Employees Alleging Retaliation or Disclosing Wrongdoing

- Stay open and receptive to employee's disclosures of wrongdoing even if the disclosures do not appear to meet the legal definition of whistleblowing
- Find out what the employee is trying to accomplish with the disclosure of wrongdoing (e.g., requesting an investigation of the disclosure or filing a complaint of retaliation)

# Respond to Employees Alleging Retaliation or Disclosing Wrongdoing

- Determine whether the employee wants to remain anonymous and familiarize yourself with agency policies covering anonymity (i.e., do not promise an employee that you will keep their identity secret if it is not possible under your agency's policies)
- Even if you disagree with the content of the disclosure of wrongdoing or the facts of the alleged retaliation, ensure that you do not allow your disagreement to affect your personnel decisions

# Respond to Employees Alleging Retaliation or Disclosing Wrongdoing

- Do not take action against an employee for disclosing wrongdoing “outside the chain of command” or for disclosing the information in violation of a rule, regulation or policy
- If the employee is attempting to reveal *classified information* or information *prohibited from release by law*, inform the employee that their right to disclose such information is limited to the following entities: the Office of Special Counsel (OSC), the Office of Inspector General (OIG), and/or other appropriate authorities within the agency or Congress

# Provide Information to Employees Alleging Retaliation or Disclosing Wrongdoing

- Most importantly, inform the employee of their right to disclose government wrongdoing or allege retaliation
- If the employee alleges retaliation, inform the employee of their right to file such claims with the Office of Special Counsel, the Office of Inspector General (OIG), the OIG Whistleblower Protection Coordinator, and/or any other office within the agency that may review such allegations



# Provide Information to Employees Alleging Retaliation or Disclosing Wrongdoing

- If the employee is requesting an investigation of the alleged wrongdoing, there may be concerns with the supervisor conducting such investigations
- Supervisors should, however, alert the appropriate agency investigative authority if, for instance, the employee discloses a danger to public health or safety or any other imminent harm

# Foster an Environment Where Employees Feel Comfortable Alleging Retaliation or Disclosing Wrongdoing

For example:

- Remind employees of their right to engage in whistleblowing, e.g., through periodic emails or at staff meetings, and stress your goal of creating/maintaining a workplace free from retaliation
- Remember protected disclosures of government wrongdoing (those not prohibited by law or classified) may be made to *anyone*, including outside of the agency, and employees are not required to follow a chain of command

# Foster an Environment Where Employees Feel Comfortable Alleging Retaliation or Disclosing Wrongdoing

For example:

- Provide employees with an anonymous suggestion box
- Highlight that whistleblowing may lead to innovation or modification of practices
- Publicize an example in which a whistleblower's disclosure of wrongdoing led to better practices
- Be receptive to differing points of view and encourage employees to share their dissenting opinions

# **Guide for Supervisors**

## ***Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 & Special Counsel Reauthorization Act of 2017***

P.L. 115-91 (12/12/2017)

The following points will assist supervisors with meeting the new supervisory whistleblower criteria as well as the new supervisory obligation to respond to allegations of retaliation:

- Inform the employee of their right to disclose government wrongdoing or allege retaliation to several entities (depending upon the agency), including but not limited to, OSC and/or the appropriate OIG.
- Advise the employee of the various avenues to report the government wrongdoing or file a complaint of retaliation.

# Guide for Supervisors

## *Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 & Special Counsel Reauthorization Act of 2017*

P.L. 115-91 (12/12/2017)

- Provide information on your agency's confidentiality policies
- Alert the appropriate agency investigative authority if, for instance, an employee discloses a danger to public health or safety.

# OSC Phone / Email Contacts



Case Review Division: (202) 804-7000/(800) 872-9855  
info@osc.gov

Disclosure Unit: (202) 804-7000/(800) 872-9855  
info@osc.gov

Hatch Act Unit: (202) 804-7002/(800) 85-hatch  
hatchact@osc.gov

Website: osc.gov [complaint forms/e-file]

Speaker Requests &  
Certification Program: (202) 804-7163  
certification@osc.gov

# EEO Complaint Process

- An aggrieved person has 45 days from date of alleged discrimination or personnel action to contact an EEO Counselor
- EEO Counselor has 30 days to conduct an informal inquiry and attempt an informal resolution
  - Offer Alternate Dispute Resolution (ADR) (+60 days if ADR process is attempted)
- If resolution is not reached, a formal complaint may be filed
- In that case, the AG requests a formal investigation



# EEO Complaint Process

- Investigator conducts formal investigation and prepares/presents formal report of investigation
- The AG or designee meets/holds a discussion with the complainant
- If no resolution at that time, complainant may request a final decision by NGB within 30 days
- If complainant is dissatisfied with NGB decision, the complainant can file a civil action within 180 days from the date of the complaint



# Alternate Dispute Resolution (ADR)

- Any procedure that is used to resolve issues in controversy, including, but not limited to, conciliation, facilitation, mediation, fact finding, mini trials, arbitration and the use of ombudsman, or any combination thereof



# Alternate Dispute Resolution (ADR)



- It is the policy of the National Guard to voluntarily use ADR to resolve workplace and other disputes at the earliest stage feasible, by the fastest and least expensive method possible, and the lowest possible organizational level
- The National Guard Bureau uses the mediation process for Equal Employment Opportunity disputes and the facilitation process for military Equal Opportunity disputes



# Mediation Process



- Non-controversial in nature
- Provided through the skills of a trained mediator (not typically from within the direct chain of command)
- Allow parties involved to arrive at what each of them agree is the best resolution
- Permits the complainant to still pursue a formal complaint if not satisfied with the process



# Supervisor Responsibilities



- **Promote** a work environment **free** from **discrimination** and **harassment** of any kind
- Ensure employees are **not subjected** to a hostile work environment because of their race, color, national origin, religion, age, gender, disability or genetic information
- Ensure employees are treated **fairly** and **equitably**
- **Understand** the goals of the EEO Program and actively participate in accomplishing these goals
- **Develop** a positive, problem-solving approach to handling discrimination
- **Act** on and **investigate ALL** complaints of discrimination and harassment

**Resolve conflicts at the lowest level**

**Explore options to improve relationships**

**Sensitize yourself & your subordinates**

**Promote positive human relations**

**Eliminate unacceptable behavior**

**Consider organization & employee needs**

**Teach non-discrimination & EO skills**



# Questions?

